



Regulatory Issues facing the Surface Transportation Board

STB Commissioner Francis P. Mulvey

NGTC / TEGMA

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Overview of the STB



The Railroads and the Surface Transportation Board

- Residual economic regulation of the railroads
- Successor agency to the ICC—child of deregulation
- Created by the ICC Termination Act of 1995
- Reduced scope of regulatory activity--*many rail movements deemed competitive*
- Smaller staff



STB Mission

- Exclusive review and approval of rail mergers
- Review of rail rates and practices to ensure they are reasonable and not discriminatory
- Approval, including environmental review, of
 - (i) construction of any new rail line or
 - (ii) abandonment of existing lines
- Motor carrier collective activities
- Rates for non-contiguous domestic trade
- Rates for pipelines not carrying energy products



STB Merger Authority

- Mergers in post-Staggers era
- STB merger policy in the 1990s
- Merger moratorium
- Categories of merger transactions
(major, significant, and minor)
- Mergers and downstream impacts



STB Responsibilities over Rates and Service

- Oversee and monitor rail practices nationally
- Enforce common carrier obligation
- Ensure rail practices are reasonable
- Ensure that rates charged captive customers are reasonable
- Assist railroads to earn adequate revenues
- Revenue adequacy and cost of capital determinations



Rate Case Resolution

- Determination of market dominance (180% R/VC)
- Stand Alone Cost Test—*Fact based approach rooted in economic reasoning and approved by courts*
- No substitute for preparing a strong case with solid evidence
- Strive for a balance between railroads need to earn adequate returns and shippers needs for fair and reasonable rates



Alternative Approaches

- SAC approach has been criticized as artificial and overly complex
- SAC approach is very costly and time consuming
- Only feasible for large shippers—no small shipper cases
- Is it time to look for alternative approaches?
 - Recent decisions suggest openness to proposed rulemaking on SAC changes
 - Potential March hearing on SAC process



Environmental Review

- Approval of new construction
 - DM&E
 - Yucca Mountain
- Abandonment cases
- Offers of Financial Assistance (OFAs)
- Rails to Trails
- Line sales and paper barriers



Recent Changes in STB Procedures

- Greater openness, more public meetings
- Increased reliance on mediation and technical conferences
- Expedited discovery procedures
- Greater shipper and carrier outreach



STB --
2004 in Review
2005 in Preview



2004 in Review – Overall

- Board at full strength with confirmation of two new members
- Agency worked off a significant backlog in last six months
- Held 17 Public meetings on significant issues:
 - Six Voting Conferences
 - Seven Oral Arguments
 - Four Hearings



2004 in Review – Maximum Rate Cases

- Decisions on three maximum coal rate cases
- Decisions on five petitions for reconsideration of already-decided maximum rate case decisions
- Oral arguments in two rate cases
- Only one new coal maximum rate case filed
- Conducted site visit to Powder River Basin



2004 in Review – Service Issues

- Board carefully monitored rail trends and performance
- Urged open communication between railroads and shippers
 - San Francisco, Atlanta, Kansas City and Houston Service forums
 - Worked to resolve many smaller service complaints
- Asked railroads to submit their fall peak plans
- Worked with railroads and shippers on service issues



Freight Rail Capacity Issues



Insufficient Railroad Capacity

- Current and future service issues often demand and capacity driven
- Agency's role - not clearly defined
- Most commodities are deregulated and/or modally competitive
- Interstate Commerce Act laws and doctrine look at reasonableness
- Customers want fairness
- Responsibility is to system as a whole



Capacity Constraints – Short-term Causes

- Increased rail demand and tightness in rail capacity
 - ✓ Expanding economy increased imports
 - ✓ Large grain harvests in 2003 and 2004
 - ✓ Shortness of crew and equipment
 - ✓ Insufficient capital expenditures
- Trucking capacity is also tight
 - ✓ Increased fuel prices
 - ✓ Driver shortages
 - ✓ High insurance costs
 - ✓ Uncertain hours of service rules



Capacity Constraints – Long-term Causes

- Future demand for freight movement predicted to increase
- Challenge for private companies to meet that demand
- Constraints on capital investment
 - ✓ Railroads inability to achieve revenue adequacy
 - ✓ Demands of investors
 - ✓ Under capacity and over capacity at the same time
- Demands of changing freight flows



Public Investment in Rail Infrastructure?

- Railroad ROI's inadequate—not earning cost of capital
 - Extraordinary costs
 - Revenue constraints
- Railroad Trust Fund concept - Class I opposition
- Public Private Partnerships (PPPs) –
 - CREATE
 - Alameda Corridor
- Short Lines and 286 capacity
- Repeal of \$0.043 per gallon Fuel Tax
- Investment Tax Credits for Short Lines



Railroad Cost of Capital and ROI

Sources: Annual R-1 Reports and AAR

	Cost Of Capital	BNSF	CSXT	NS	UP	KCS	SOO	GT	IC
1996	11.9%	8.6%	8.9%	13.0%	9.3%	7.2%	23.5%	0.0%	15.2%
1997	11.8%	8.4%	9.8%	13.1%	5.2%	3.6%	12.3%	5.2%	15.8%
1998	10.7%	9.7%	8.1%	10.5%	2.9%	9.1%	4.9%	3.0%	13.6%
1999	10.8%	9.5%	3.8%	5.2%	6.8%	6.4%	2.5%	25.4%	10.0%
2000	11.0%	8.8%	3.6%	5.5%	6.9%	6.3%	5.6%	5.9%	5.9%
2001	10.2%	7.1%	4.6%	8.3%	7.6%	7.0%	5.9%	4.9%	4.9%
2002	9.8%	6.4%	5.2%	9.1%	8.6%	6.5%	5.7%	3.1%	3.1%
2003	9.4%	6.2%	4.0%	9.1%	7.3%	3.7%	.01%	4.5%	4.5%



STB – 2005 Priorities

- Progress on small rate cases
- Improved customer service from carriers
- Examination of capacity constraints
- Focus on 25th Anniversary of Staggers Act



Resources for Shippers

- Careful monitoring of carrier performance
- Call carriers with problems
- Working with carriers on supply chain
- Board's Rail Consumer Assistance Program



Rail Consumer Assistance Program

- Facilitates informal solutions to disputes with RR's
- Brings issues to RR's attention rapidly
- Solves Problems without Litigation
- Promotes Rail Service Improvements
- 120 Rail Consumer complaints handled in 2004;
over 420 handled since program began in 2000



Rail Consumer Assistance Program

Three ways to get help:

- Telephone call – **Toll Free (866) 254-1792**
- Written statement of problem
 - **Email railconsumer@stb.dot.gov**
 - **Fax (202) 565-9011**
- Web Form at
<http://www.stb.dot.gov/railconsumer.nsf/feedback?OpenForm>

